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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

GEOVANI SOSA,

Defendant and Appellant.

F057624

(Super. Ct. No. SC075739A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Jerold L. Turner, Judge.

Randy Kravis, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\*Before Hill, Acting P.J., Kane, J., and Poochigian, J.

On November 9, 1998, at approximately 12:09 a.m. officers responded to La Movida Night Club on a report of shots being fired. Robert Rowan, a security guard at the club, told them that earlier appellant, Geovani Sosa, was being loud and boisterous and had to be escorted out of the building. When Rowan told Sosa to leave, Sosa replied, “You’re going now” and took a gun out of his pocket. Sosa fired a shot that missed Rowan as Rowan ran back to the club. Rowan then saw Sosa contact Omar Heredia and exchange some clothing with him. While Rowan spoke with an officer, another security guard arrested Sosa and Heredia and turned them over to the officers. A loaded .38-caliber pistol was found in Heredia’s pants pocket and a spent .38-caliber casing was found on the ground in the area where the shooting occurred.

On or about November 11, 1998, the district attorney filed a complaint charging Sosa with assault with a firearm (Pen. Code, § 245, subd. (a)(2)) and a personal use of a firearm enhancement (Pen. Code, § 12022.5, subd. (a)).

On November 23, 1998, while represented by Public Defender Erin Dietrich, Sosa pled guilty to the assault charge and admitted the arming enhancement in exchange for a stipulated term of 5 years.

On February 8, 1999, Sosa, through new appointed counsel, filed a motion to withdraw his plea alleging that he did not recall being advised by defense counsel Dietrich that he would have to serve 85 percent of his time because the offense he committed was a violent felony. (See Pen. Code, § 2933.1.)

On March 1, 1999, the court held a hearing on Sosa’s motion. During the hearing, defense counsel Dietrich testified she never advised Sosa that his plea agreement would require him to serve at least 85 percent of his sentence. After Dietrich testified, an issue arose regarding Sosa’s competency to proceed and the court suspended criminal proceedings.

On March 8, 1999, Dr. Richard E. Burdick examined Sosa and found him competent to stand trial.

On April 8, 1999, the hearing on Sosa's motion to withdraw his plea resumed. During the hearing, Sosa testified that prior to entering his plea no one ever explained to him that if he admitted the firearm enhancement, he would be required to serve 85 percent of his time. He also claimed that had he known this he would never have admitted the use of a firearm enhancement. After hearing counsels' arguments, the court denied the motion.

On April 22, 1999, the court issued a warrant for Sosa's arrest after he failed to appear at his sentencing hearing.

On February 10, 2009, Sosa was detained in jail on the warrant.

On April 22, 2009, the court sentenced Sosa to the stipulated five-year term, the mitigated term of two years on his assault conviction and the mitigated term of three years on the arming enhancement.

Sosa's appointed appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Sosa has not responded to this court's invitation to submit additional briefing.

Following independent review of the record, we find that no reasonably arguable factual or legal issues exist.

The judgment is affirmed.